IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. ASHOK KUMAR

WRIT PETITION NO.5814 OF 2000

The State of Tamil Nadu, rep.
by its Secretary to Government,
Home Department, Fort St. George,
Chennai 9. .. Petitioner

Vs.

1. R. Rajasekar,
S/o. late P. Ramasamy

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to call for the records pertaining to the order dated 17.11.1999 in O.A.No.6571/1999, on the file of Tamil Nadu Administrative Tribunal and quash the same.

For Petitioner : Mr.S. Gomathinayagam
Special Govt. Pleader

For Respondent-1 : Mr.R. Thiagarajan
Senior Counsel for
Mr.V.Ravikumar

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O R D E R

(The Order of the Court was made by P.K. MISRA, J)

Heard Mr.S. Gomathinayagam, Special Government Pleader for the petitioner and Mr.R. Thiagarajan, Senior Counsel, for Respondent No.1.

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2. The present writ petition has been filed by the State of Tamil Nadu against the order dated 17.11.1999 in O.A.No.6571 of 1999.

3. The facts giving rise to the present writ petition are as follows :-

The present Respondent No.1 was initially appointed as Senior Inspector in the Co-operative Department in the year 1996. At that time, as per notification dated 7.7.1997, applications were invited by the State for the direct recruitment to the following posts in Group-I services :-

(i) Deputy Collector
(ii) Divisional Development Officer
(iii) Deputy Superintendent of Police
(iv) Deputy Registrar of Co-operative Societies

The present Respondent No.1 had applied for the posts in Group-I Services. On the basis of the preliminary examination, Respondent No.1 was qualified for the main written examination. Such examination was a common examination meant for all the posts in Group-I services. The Respondent No.1 has indicated the post of Deputy Superintendent of Police as his first choice and the post of Divisional Development Officer as his second choice. After the qualifying examination, Respondent No.1 was called for interview and subsequently by Memorandum No.649 dated 31.3.1999, he was selected provisionally for the post of Deputy Superintendent of Police for the year 1996-97. However, it seems that the Medical Board had found that the present Respondent No.1 did not have the requisite norm so far as height is concerned, and therefore, he was not deputed for training. Representation filed by the Respondent No.1 having proved futile, the Original Application was filed before the Tribunal. The Tribunal allowed the Original Application and held that the deletion of the name of the Respondent No.1 from the selection list was unjustified and a direction was issued for appointing the Respondent No.1. Such order is being challenged.

4. The main contention of the learned counsel appearing for the petitioner is to the effect that as per the norms for the post of Deputy Superintendent of Police height of a person is required to be 165 cm. whereas, admittedly the height of the Respondent No.1 is only 161 cm, and therefore, such a direction should not have been issued.

5. We find that there is sufficient force in such submission. Since the applicant did not have the requisite height, obviously, a direction regarding his appointment should not have been made. The direction issued by the Tribunal to that effect is required to be set aside.

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6. Learned Senior Counsel appearing for Respondent No.1 has submitted that in fact in the Application Form, the present Respondent No.1 has indicated his choice for other posts in Group-I services. It is submitted by him that the Respondent No.1 had given the post of Divisional Development Officer as his second choice. He has further submitted that if the Respondent No.1 was not eligible to be appointed as the Deputy Superintendent of Police, since he had qualified on the basis of the common written examination and the interview, at least his case should have been considered for the other post as per the alternative choice given by him in the Application Form.

7. Learned counsel for the petitioner has submitted that in the absence of specific material, it is not possible to come to a conclusion that in fact the present Respondent No.1 had given any other choice.

8. There is no dispute that the recruitment examination is common for all the posts in Group-I Services. If the present Respondent No.1 had given Divisional Development Officer as his second choice, and had also indicated about other choices, he should have been considered for appointment against such vacant post as he was ineligible for the post of Deputy superintendent of Police, which was his first choice. Whether the petitioner had given any other choice or not can be easily verified by the present petitioner and in fact we have no reason to discard the submission made by the learned Senior Counsel that Respondent No.1 has indicated the post of Divisional Development Officer as his second choice.

9. From the White Paper produced in the State Legislative Assembly on 11.5.2000, it is apparent that many posts were lying vacant against the reserved category. Since the Respondent NO.1 had appeared in the common written examination for all the posts in Group-I services, even if he was found ineligible for the post indicated by him as his first choice, there is no embargo on the part of the present petitioner to consider the case of the Respondent No.1 for selection in respect of vacant posts in Group-I services as per the choice given by him. It is not the case of the present petitioner that the written examination and interview were different for the posts indicated in Group-I services. Non-consideration of the case of the present Respondent No.1 for selection against other posts in Group-I services on the basis of the very same examination and interview was improper, particularly when it was found that Respondent No.1 was not eligible for the post of Deputy Superintendent of Police as he fall short of required height. As already indicated, the White Paper produced in the Assembly indicates that many posts are

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lying vacant in the reserved category.

10. Having regard to all these facts, while setting aside the order of the Tribunal directing appointment of the present Respondent No.1 as the Deputy Superintendent of Police, we mould the relief claimed in the O.A., and give a direction to the present petitioner to consider the question of selection and appointment of Respondent No.1 on the basis of the marks obtained by him in the written examination and in the interview in respect of the vacancies for the relevant year. The question of selection should be considered in accordance with the preference indicated in the Application Form for the posts. This exercise may be completed within a period of three months from the date of receipt of the order and necessary communication may be issued to the present Respondent No.1 on this aspect.

11. The writ petition is accordingly allowed in part and the direction given by the Tribunal is modified as indicated earlier. There would be no order as to costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   The State of Tamil Nadu
   Home Department, Fort St. George,
   Chennai 9.

2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai 600 104.

+ 1 cc to Mr.V.Ravikumar, Advocate SR 55523

+ 1 cc to the Government Pleader SR 55612

ORDER IN WP.NO.5814/2000

MJ(CO)
SR

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